

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,202

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a twenty-eight-year-old woman who received her bachelor's degree in elementary education in 1991. She has worked off and on since 1984, primarily as a clerk. From October of 1992 through October of 1995, she worked either directly for or as a subcontractor with the Immigration and Naturalization Service where she was required to understand, correct, type and file applications for alien status applicants.
2. The petitioner has a number of health problems, including hearing loss since childhood, chronic ear infections, chronic sinus infections and tinnitus (ringing in her ears) which causes her to have severe migraine headaches. The combination of chronic ear infections, headaches and ringing and dizziness in her ears caused her to leave her last employment after missing eight days of work between September 19 and October 3, 1995. In February of 1996, the petitioner was found to have severe allergies which are possibly contributing to her chronic infections and to the tinnitus.
3. The petitioner wears hearing aids which correct her hearing in her left ear to a point where she has excellent speech discrimination in that ear but which do not provide the same level of correction for her right ear. Her principal problem at present continues to be the combination of ringing in her ears, dizziness, headaches, infections and allergies. She has been treated at an emergency room at least eight times during 1994 and 1995 for severe exacerbations of these problems. Medical records show that from January through December of 1995, the petitioner was treated on seven different occasions for ear infections which were resistant to medications. Her physician who specializes in ear problems characterized her condition as causing her a "great deal of frustration" and as creating "communication difficulties." Another physician described her tinnitus in September of 1995 as having reached a

"disturbing" level of loudness. In April of 1996, she was determined to be suffering from a mild case of temporo-mandibular joint syndrome which seems to be unrelated to the tinnitus.

4. The petitioner's allergies are being addressed through a course of desensitization injections which were begun in late February of 1996, and which are not expected to have any significant effect until late August of 1996. Her allergist has stated that while this process is going on the severity of her allergies will not improve much and he doubts that the petitioner "will be able to function normally in the work place." She has severe allergies to fans, fumes, odors, carpeting, and air conditioning as well as many foods, grasses and molds. It is her allergists' opinion that the petitioner's allergies may trigger her ear and sinus infections and contribute to her ear ringing and dizziness.

5. The petitioner has difficulty discriminating speech but she can read lips and has been able to work with this difficulty which began when she was thirteen months old. Her major disabling condition is tinnitus which at present is so loud that she cannot concentrate or focus on anything for long. She cannot hear voices on T.V. or in the movies over the ringing. She has taken medication for the tinnitus but the medication made it worse, there is nothing which can be done for this problem at present. The concentration and strain of communicating or thinking with this problem, gives her mild to severe headaches at least three times per week. Exposure to her allergens causes her face and eyelids to swell up.

6. While the evidence indicates that the petitioner's current condition is severe enough to keep her from working, there is no medical evidence which indicates that her condition is likely to remain as severe as it has been until October 3, 1996, the one year anniversary of the date of onset of her severe condition. The medical evidence indicates that the petitioner is currently in a course of treatment which is expected to dramatically decrease her symptoms by late August of this year.

### ORDER

The decision of the Department is affirmed.

### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has shown that she has a combination of

impairments which are severe enough to keep her from performing her prior work or any other substantial gainful activity in the national economy at present. However, she has not presented evidence that her impairments can be expected to last for a continuous period of twelve months. As such, she does not meet the eligibility requirements for Medicaid.

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